

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,
Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

**CITY OF DETROIT’S *EX PARTE* MOTION TO STRIKE AS
UNTIMELY THE OBJECTION TO FEE STATEMENT
FILED BY H.D.V. GREEKTOWN, LLC,
415 EAST CONGRESS, LLC, AND K&P, INCORPORATED**

The City of Detroit, Michigan (the “City”), by its undersigned counsel, files its *City of Detroit’s Ex Parte Motion to Strike as Untimely the Objection to Fee Statement Filed by H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated* (the “Motion”). In support of its Motion, the City respectfully states as follows.

I. INTRODUCTION

On August 2, 2018, this Court entered its *Order Granting the City of Detroit’s Motion for the Entry of an Order Enforcing the Plan of Adjustment Injunction Against H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated* (“Order,” Doc. No. 12863). Paragraph 4 of the Order stated that the City was to file and serve on counsel for the Cabarets an itemization of its attorneys’ fees and costs, and that “[t]he Cabarets must file any objection to such itemization no later than 14 days after they are served with the City’s itemization.”

The City filed and served its itemization (“Statement”) on opposing counsel via ECF on August 16, 2018. (Certificate of Service (“COS”) filed with Statement, Doc. No. 12870.) The City also mailed a courtesy copy of the Statement to opposing counsel. *See* COS. Matthew Hoffer, an attorney for the Cabarets, received the Statement via email on August 16, 2018, at or around 4:25 p.m. Excerpt from ECF service email, attached as **Exhibit 6-1**.

Because service was effected electronically, Federal Rule of Bankruptcy Procedure 9006(f) does not apply. If the Cabarets wished to object to the Statement, they needed to file their objection no later than August 30, 2018. Or, in the alternative, the Cabarets could have moved for an extension of time to file their objection. Fed. R. Bankr. Proc. 9006(b)(1); E.D. Mich. LBR 9006-1(b).

On August 31, 2018, Matthew Hoffer filed *H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated’s Objection to Statement of Attorneys’ Fees Related to City of Detroit’s Motion for Entry of an Order Enforcing the Plan of Adjustment* (“Objection”). The Objection contains no explanation for why it was filed late nor makes any mention that it is untimely. No motion was filed either before or after the August 30 objection deadline seeking an extension of the objection deadline.

II. ARGUMENT

Effective December 1, 2016, Federal Rule of Bankruptcy Procedure 9006 was amended. “Subdivision (f) [was] amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served.” Fed. R. Bankr. P. 9006 2016 advisory committee notes. Thus, service by ECF no longer entitles a party to an additional three days in which to respond to a motion.

Federal Rule of Bankruptcy Procedure 9006(b)(1) states

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

The rule, as interpreted by the Supreme Court, makes it clear that a court may extend a party’s response deadline after it has passed only if the party files a motion for such relief and demonstrates to the court that its failure to act in a timely fashion was due to excusable neglect. *Loesel v. City of Frankenmuth*, No. 08-11131, 2014 WL 3894362 at *3 (E.D. Mich. Aug. 8, 2014) (citing *Pioneer Inv. Serv. Co. v. Brunswick Assocs. P’ship*, 507 U.S. 380, 395 (1993)); *Stevens v.*

Liberty Ins. Corp., No. 11-14695, 2012 WL 2408719 at *1 (E.D. Mich. June 26, 2012).

Here, the Order provided that any objection to the Statement needed to be filed within 14 days of service of the Statement. Order, ¶ 4. It was served on Matthew Hoffer by electronic service on August 16, meaning that any objection to the Statement was due no later than August 30, 2018. The Objection was filed a day later of August 31. No motion was made to extend the response deadline nor was any excuse proffered for the tardiness of the Objection. Accordingly, the response deadline cannot and should not be extended, rendering the Objection untimely. It should be stricken from the record.

This is the second deadline H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated (collectively, “Cabarets”) has missed. Recently, the City filed its *City of Detroit’s Motion for the Entry of an Order Enforcing the Plan of Adjustment Injunction Against H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated* (“Motion to Enforce,” Doc. No. 12852). Because the Cabarets failed to timely respond to the Motion to Enforce, the Court granted it. Doc. Nos. 12862, 12863. As here, the Cabarets did not ask the Court to excuse their tardiness, choosing instead to present their untimely arguments via a motion to reconsider. Doc. No. 12882; *see also* the City’s response, Doc. No. [12886].

The untimely filing of the Objection thus appears to be a continuation of the disregard which the Cabarets have shown for the Court's deadlines.

The Court has previously granted *ex parte* motions to strike inappropriate filings in this case.¹ The City again asks for the Court's help in enforcing the orders and deadlines the Court has entered in the City's bankruptcy case.

III. CONCLUSION

For the reasons set forth above, the City respectfully asks this Court to enter an order in substantially the same form as the one attached as Exhibit 1, striking the Objection as untimely and granting such further relief as the Court may deem reasonable or appropriate.

¹ *City of Detroit's Ex Parte Motion to Strike Committee's Unauthorized Supplemental Brief* [Docket No. 2724], Doc. No. 2731; *Order Striking Committee's Supplemental Brief*, Doc. No. 2754; *City of Detroit's Ex Parte Motion to Strike COPS Holders' Unauthorized Supplemental Brief* [Docket No. 3369], Doc. No. 3398; *Order Striking COPS Holders' Unauthorized Supplemental Brief*, Doc. No. 3451.

Dated: September 4, 2018

Respectfully submitted,

By: /s/ Marc N. Swanson

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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT LIST

| | |
|-------------|-------------------------------------|
| Exhibit 1 | Proposed Order |
| Exhibit 2 | None [Motion seeks ex parte relief] |
| Exhibit 3 | N/A |
| Exhibit 4 | Certificate of Service |
| Exhibit 5 | N/A |
| Exhibit 6-1 | Excerpt from ECF Service Email |

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,

Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

**[PROPOSED] ORDER GRANTING THE
CITY OF DETROIT’S *EX PARTE* MOTION TO STRIKE AS
UNTIMELY THE OBJECTION TO FEE STATEMENT
FILED BY H.D.V. GREEKTOWN, LLC,
415 EAST CONGRESS, LLC, AND K&P, INCORPORATED**

This matter, having come before the Court on the *City of Detroit’s Ex Parte Motion to Strike as Untimely the Objection to Fee Statement Filed by H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated* (the “Motion”)¹, the Court being fully advised in the premises, and there being good cause to grant the relief requested,

THE COURT ORDERS THAT:

1. The Motion is granted.
2. *H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated’s Objection to Statement of Attorneys’ Fees Related to City of Detroit’s Motion for Entry of an Order Enforcing the Plan of Adjustment* filed at

¹ Capitalized terms used but not otherwise defined in this Order shall have the meanings given to them in the Motion.

Docket Number 12885 is stricken for being untimely filed and the City of Detroit does not need to file a response to it.

EXHIBIT 2

NOT APPLICABLE

EXHIBIT 3

NOT APPLICABLE

EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 4, 2018, he filed the *City of Detroit's Ex Parte Motion to Strike as Untimely the Objection to Fee Statement Filed by H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated* ("Motion") using the court's CM/ECF system which provided notice of the filing to all registered participants in this matter. The undersigned further certifies that on September 4, 2018, a copy of the Motion was served upon the following via United States mail:

Bradley Shafer; Matthew Hoffer
Shafer & Associates, P.C.
3800 Capitol City Blvd., Suite 2
Lansing, MI 48906

By: /s/ Marc N. Swanson

Marc N. Swanson
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 496-7591
Facsimile: (313) 496-8451
swansonm@millercanfield.com

Dated: September 4, 2018

EXHIBIT 5

NOT APPLICABLE

EXHIBIT 6-1

Excerpt from ECF Service Email

Spinner, Ronald A.

From: mieb_ecfadmin@mieb.uscourts.gov
Sent: Thursday, August 16, 2018 4:25 PM
To: mieb_ecfadmin@mieb.uscourts.gov
Subject: 13-53846-tjt "Declaration" Ch 9

CAUTION EXTERNAL EMAIL: DO NOT open attachments or click links from unknown or unexpected emails.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.

U.S. Bankruptcy Court
Eastern District of Michigan

Notice of Electronic Filing

The following transaction was received from Marc N. Swanson entered on 8/16/2018 at 4:24 PM EDT and filed on 8/16/2018

Case Name: City of Detroit, Michigan and Audio Visual Equipment & Supplies
Case Number: [13-53846-tjt](#)
Document Number: [12870](#)

Docket Text:

Declaration Statement of Attorneys Fees Related to City of Detroit's Motion for the Entry of an Order Enforcing the Plan of Adjustment Injunction Against H.D.V. Greektown, LLC, 415 East Congress, LLC, and K&P, Incorporated Filed by Debtor In Possession City of Detroit, Michigan (RE: related document(s)[12863] Order on Motion to Enforce). (Swanson, Marc)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:U:\1 new ECF docs\City of Detroit\HDV et al\FEE STATEMENT-HDV\HDV FEE STATEMENT.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1068232149 [Date=8/16/2018] [FileNumber=54598932-0] [ca116f123ef8da0a75f67408628cdfd355cbfb52e1f5a5725dc5ab034bbf4bb964c01f712816da08ede8271d52f96e7d9f93a1e0f84bc86f8a1fdde887972593]]

13-53846-tjt Notice will be electronically mailed to:

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Robert S. Hertzberg on behalf of Defendant John Naglick
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